



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MKB/169770

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on November 17, 2015, at Superior, Wisconsin.

The issue for determination is whether the petitioner is disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No Appearance

Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Douglas County.
2. The petitioner receives medical assistance through the Katie Beckett waiver.

3. The petitioner is an 11-year-old child diagnosed with dwarfism, intestinal problems, and hyperthyroidism.
4. The Disability Determination Bureau found that the petitioner is no longer disabled. It upheld that decision upon reconsideration on October 28, 2015.
5. The petitioner has no limitations in acquiring and using information, attending and completing tasks, interacting and relating with others, or in moving about and manipulating objects.
6. The Disability Determination Bureau concedes that the petitioner has a marked limitation in her health and physical well-being.
7. The petitioner's ability to care for herself is affected by requiring the following care and being unable to provide it herself:
 - a. She requires G-Tube feeding at various times, depending upon her health. If her intestines shut down she can require the G-Tube for one day to a couple of weeks. This has happened three times this year and has happened six to seven times a year in recent years
 - b. She requires daily shots.
 - c. She takes other medicine five times a day. medicine, including daily shots
 - d. She throws up frequently, which requires changes to her bedding and clothes.
 - e. She also is incontinent. She can change her own pullups but not her bedding, which she frequently soaks.
 - f. At school she requires a special attendant because of the need to care for her G-Tube.

DISCUSSION

The Department seeks to end the petitioner eligibility for medical assistance through the Katie Beckett waiver. This program seeks to save government funds by allowing disabled children who would otherwise be in an institution to receive medical assistance while living at home with their parents. 42 U.S.C. § 1396a(e)(3)(b)(i); 42 C.F.R. § 435.225(b)(1); Wis. Stat. § 49.46(1)(d)4. The Division uses a multiple-step process to review Katie Beckett waiver decisions. If the criteria of the first step are not met, the process ends and the application is denied.

The Department found that the petitioner no longer meets the first step, which is to determine whether she is under 19 years old and disabled according to standards outlined in the Social Security Act. A child is disabled "if a medically determinable physical or mental impairment or combination of impairments substantially reduces...the child's ability to function independently, appropriately, and effectively in an age-appropriate manner." In addition, the disability must be expected to last at least one year or end in death. *Katie Beckett Program: Policies and Procedures*, p.32.

Current standards for childhood disability were enacted following the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A disabling impairment for children is defined as follows:

If you are a child, a disabling impairment is an impairment (or combination of impairments) that causes marked and severe functional limitations. This means that the impairment or combination of impairments:

- (1) Must meet or medically or functionally equal the requirements of a listing in the Listing of Impairments in appendix 1 of Subpart P of part 404 of this chapter, or
- (2) Would result in a finding that you are disabled under § 416.994a.

20 C.F.R. § 416.911(b). The reference in § 416.994a subsection (2) describes disability reviews for children found disabled under the prior law. Since the petitioner's disability began after the new law was passed, she must meet or equal a listing described in subsection (1).

The process for determining whether an individual meets this definition is sequential. *See* 20 C.F.R. § 416.924. First, if she is doing "substantial gainful activity," she is not disabled and the evaluation stops. The petitioner is 11 years old and not working, so she passes this step.

Second, physical and mental impairments are considered to determine whether the claimant has an impairment or combination of impairments considered severe. If the impairment is a slight abnormality or a combination of slight abnormalities that causes no more than minimal functional limitations, it will not be found to be severe. 20 C.F.R. § 416.924(c).

An applicant functionally equals a listed disability if she proves that she has an extreme limitation in one broad area of functioning or marked limitations in two broad areas of functioning. 20 C.F.R. § 416.925. An extreme limitation interferes very seriously with the child's ability to "independently initiate, sustain, or complete activities." It does not necessarily mean a total lack or loss of ability to function. *See* 20 C.F.R. § 416.926a(e)(3). A marked limitation "interferes seriously with [the] ability to independently initiate, sustain, or complete activities." 20 C.F.R. § 416.926a(e)(2).

SSI rules require review of the following six domains when determining whether the petitioner has limitations: (1) Acquiring and using information, (2) Attending and completing tasks, (3) Interacting and relating with others, (4) Moving about and manipulating objects, (5) Caring for yourself, and (6) Health and physical well-being. 20 C.F.R. § 416.926a(b)(1). The Disability Determination Bureau concedes that the petitioner has a marked limitation in the area of health and physical well-being. She concedes she has no limitation in any of the other areas except caring for herself. Until her latest review, the bureau had determined that she had a marked limitation in that area, but it now contends that the limitation is less than marked. Thus, whether she remains eligible depends upon whether she still has a marked limitation in her ability to care for herself.

The petitioner is an 11-year-old girl diagnosed with dwarfism, intestinal problems, and hyperthyroidism. The department contends that she no longer has a marked limitation in her ability to care for herself because she needs her G-Tube for feeding less frequently than she did before. This is true, but it is not a complete picture of the help she requires. Whether she needs G-Tube feeding depends upon her health. Her intestines sometimes shut down, and when they do she can require the G-Tube for one day to a couple of weeks. This has happened three times this year and has happened six to seven times a year in recent years. Moreover, her ability to care for herself is not just limited by her need for a G-Tube. She requires daily shots that she cannot yet give herself. Nor can she set up her medication, which she takes five times a day, without assistance. She vomits frequently, which requires changes to her bedding and clothes. She is also incontinent. Although she can change her pullups, she cannot change her bedding, which she frequently soaks. Finally, she requires a special attendant at school to care for her G-Tube. Together these problems seriously interfere with her ability to independently initiate, sustain, or complete activities. Based upon this I find that she continues to have a marked limitation in her ability to care for herself.

Because this means that she has a marked limitation in two broad areas of functioning, she remains disabled. I will remand this matter to the department with instructions to determine whether she remains functionally eligible for the Katie Beckett Waiver. She has a right to appeal any finding that she is not functionally eligible. She remains eligible for the program until the appeal process ends.

CONCLUSIONS OF LAW

The petitioner remains disabled because she has marked limitations in two broad areas of functioning.

THEREFORE, it is

ORDERED

That this matter is remanded to the Division of Long-Term Care with instructions to determine whether the petitioner remains functionally eligible for Katie Beckett benefits. When doing so it shall assume that she continues to be disabled. If the division determines that she no longer is functionally eligible for the program, she may file a new appeal.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

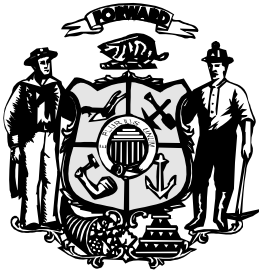
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of December, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 2, 2015.

Douglas County Department of Human Services
Bureau of Long-Term Support
Division of Health Care Access and Accountability